

# Justified search and charging decision in Whanganui

## Summary of the Incident

1. On 1 September 2020, Ms X was arrested for breaching a condition of her bail and taken to Whanganui Police Station.
2. During processing, Ms X was given a rub-down search by a female officer. Two male custody staff came to assist. Ms X was then taken to a cell where she was asked to remove all her clothing and put on a tear-proof gown due to concerns for her mental health. However, Ms X placed the gown over her clothing instead.
3. One of the male staff removed Ms X's long sleeve top and used a cutting tool to cut her undergarment strap. They then went and got two female officers to assist with removing Ms X's leggings and underwear.
4. Ms X was charged with committing an indecent act with intent to insult due to comments she made to one of the male officers and her alleged actions following the gowning. The charge was later withdrawn by Police due to insufficient evidence.
5. Ms X's lawyer made a complaint to the Authority regarding Ms X's treatment in custody including the way she was searched, the removal of her clothing, not being able to eat food her father brought in, and the subsequent charging decision. Ms X made a written statement to us through her lawyer. We attempted to interview her but were unable to do so.

## Issues examined by the Authority

**Issue 1:** Were custody procedures followed in accordance with policy?

**Issue 2:** Was the charging process and decision to charge appropriate?

## The Authority's Findings

6. The Authority found that:
  - 1) the search Officer B conducted was in accordance with policy;
  - 2) the decision to place Ms X in a gown was reasonable;
  - 3) no policy was breached when Ms X was put in a gown. However, Officer D did not display sound judgement when he cut off Ms X's clothing;
  - 4) Ms X was provided with adequate food and it was reasonable for Officer C to not give her food provided by her father;
  - 5) There was sufficient evidence for Officer D to lay the charge of indecent act with intent to insult against Ms X, based on her actions and comments towards Officer C; and
  - 6) Officer D relied on information provided to him and made an error in judgement when he did not review all the information within the charging documents.

## Analysis of the Issues

### ISSUE 1: WERE CUSTODY PROCEDURES FOLLOWED IN ACCORDANCE WITH POLICY?

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7. Police were called to a house in Whanganui as the property owner had removed permission for Ms X to live there, and she was therefore breaching a condition of her bail. Officers A and B (both female) arrested Ms X for the breach.
8. At the scene, officers also found a weapon that had been reported to Police by the property manager, and methamphetamine utensils.
9. Ms X's father, Mr Y, offered to bail Ms X to his address immediately. However, Officers A and B were unable to accept the offer as the change in bail address was a matter for the court to decide.
10. Mr Y informed Police that Ms X needed mental health support due to her behaviour. Officers A and B both acknowledged her behaviour was unusual and believed Ms X also showed signs of drug use. Officer A described Ms X's behaviour as: *"being under the influence of drugs, she was very unpredictable, abusive language and was talking to herself...highly agitated, sweating profusely"*.
11. As Ms X was being arrested, she said: *"being arrested like this makes me want to die. Legit makes me want to kill myself"*. This led the officers to believe Ms X was at risk of self-harming and consideration should be given to the state of her mental health.
12. Ms X was taken to Whanganui Central Police Station, where all interactions were captured on CCTV footage (without audio).

### Was Ms X's rub-down search conducted in accordance with policy?

13. Police 'Searching People' policy states that:

*"in general, searches should be carried out by constables, authorised officers or searchers of the same gender identity as the person to be searched and any person not of the same gender identity should not be present during a search".*

14. For rub-down searches, an exception may apply if an officer of the same gender is not available. This exception does not apply to strip searches.
15. Ms X said she was: *"strip-searched multiple times by multiple officers"*. She described the situation as *"degrading"* and *"over-done"*.
16. In the charge room, Officer B asked Ms X to remove her outer clothing. Officer B could not recall exactly what she asked Ms X to remove, she told us that in a standard rub-down search she would ask someone to remove *"a big jacket...shoes, jewellery, necklace"* and said that leggings and a top would be fine to keep on during a rub-down search. This instruction is in line with policy.<sup>1</sup>
17. Officer B told us that when asked to remove her outer clothing, Ms X said: *"if I am going to the cells, I am going naked"*. Ms X started trying to take her clothes off, and the officers responded: *"no [Ms X], keep those on"*.
18. CCTV shows that while removing her shoes, coat, backpack, and sunglasses, Ms X became increasingly agitated, throwing her clothing on the floor. She took off her leggings and long-sleeved top until she was in her one-piece underwear.
19. CCTV shows that Ms X was only searched once by Officer B. We are satisfied the rub-down search was conducted in accordance with policy.

### What occurred during Ms X's processing?

20. Ms X continually refused instructions to get dressed.
21. Officer D, a male officer who was the supervisor, entered the charge room. He says he made the decision to enter the room based on his established working relationship with Ms X, who had a history of being in custody and not following instructions. Officer D explained to us that Ms X:

*"refused to comply with their instructions regarding her clothing. I was advised of this and decided to have a quick chat with the defendant about her choices. I have dealt with the defendant on numerous occasions and felt that I had a very good working relationship with her. On the last occasion, she refused to interact with any other Police staff but was happy to listen to me"*.

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<sup>1</sup> Refer to paragraphs 91 – 97 for policy on 'Searching People'.

22. CCTV shows that Officer D made multiple attempts to return Ms X's clothing, however she would not take them and remained in her underwear. Officer D says he left the charge room and told staff who were with another team to stay out so as to afford Ms X appropriate privacy.
23. Officer C (also a male officer) was responsible for processing Ms X into custody. After Officer D had left the room, Officer C entered.
24. Officer C was successful in returning Ms X's long-sleeve top and leggings while she was still being processed. When asked about why Ms X was given her clothing back if they were concerned about her mental health, Officer C says that at this stage he had not been informed of the concerns.
25. Officer D told us that clothing is usually collected within the custody process and the detainee is given a gown.<sup>2</sup> However, based on Ms X's previous history in custody he wanted to return her clothing because:

*"with [Ms X] if you try and tell her 'right the first thing you have to do is take off your clothes and put a suicide gown on', that would not go well...usually it would happen up in the custody area, but with [Ms X] and the amount of people working in the station, there is no way I am going to lie her on the ground in the custody area with the chance that the rest of the station get to see...take her down to a nice quiet place, with CCTV and keep that rapport going."*

26. CCTV shows that during the processing, Officer C gave Ms X a custody document to read. Ms X folded it up and stood on a bench, facing away from Officer C. She then put the paper down the front of her leggings.
27. Officer C says that Ms X walked over to him and said: *"my other lips are hungry, and they needed to eat"* and something similar to *"thanks to your attractiveness I will be playing with myself tonight"*.<sup>3</sup>
28. CCTV shows Ms X approaching Officer C from the bench to speak to him and pointing at her mouth and crotch.
29. After Ms X was processed, Officer C told Officer D about Ms X's sexualised comments and said he felt they were inappropriate.

#### *Was it appropriate for officers to ask Ms X to wear a gown?*

30. Ms X was moved into a cell by Officers C and D. Due to the concern for her safety, Ms X was asked to remove all her clothing and put on a tear-proof gown. (This is common practice to mitigate suicide risk in custody.)
31. 'People in Police detention' policy states that: *"for detainees identified as a suicide risk consider removing their clothing and replacing it with a tear resistant gown"*.

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<sup>2</sup> The custody process includes the risk assessment, detainee evaluation, and the removal and storage of property.

<sup>3</sup> This is where the Authority believes the charge for indecent act with intent to insult could arguably come from, which is discussed further in Issue Two.

32. The decision to gown Ms X was made to ensure her physical safety following the initial identification of concern for Ms X's wellbeing on arrest.
33. It would have been preferable that the gown was provided to Ms X in the charge room when she was already in her underwear. However, Officers C and D were attempting to safely manage Ms X's behaviour by returning her clothing.
34. We believe it was reasonable for officers to request Ms X to wear a gown for her own safety.

*Did officers act appropriately when removing Ms X's clothes?*

35. While Ms X got changed into the gown, Officers C and D stood outside the room to give her privacy. Officer D told us that he gave Ms X clear instructions to: *"undress yourself, you put the gown on, you give us a yell and we will come back in when that's finished"*.
36. When Officers D and C returned, Ms X had not followed instructions. She put the gown on top of her clothing and lay down on the bed, covering herself with a blanket.
37. Ms X said that the officers had *"very little clear communication"* and were:  
  

*"very rough and inappropriate in the way they physically touched me and ripped at my undergarments, which were eventually cut off my body...I was frozen with fear and unable to do anything to get myself out of the situation"*.
38. CCTV shows both officers were wearing facemasks. Both Ms X and Officer D had their backs to the camera. However, from Officer D's body language it appears he attempted to communicate with Ms X. We cannot be sure if she replied to him, and she does not move throughout the conversation.
39. While Ms X lay on her side, Officer D picked her up with the gown arms holes and manoeuvred her body so she was lying face down. He removed her long sleeve top through the arm and head hole of the gown. He cut the straps off her one-piece underwear with a small, foldable cutter. The gown remained on Ms X throughout the process. Officer C stood to the side to assist if necessary.
40. Officer D left the cell and returned with Officers A and B. Officer D held down Ms X's upper body and Officer C held down her legs while Officers A and B removed her leggings and underwear from beneath the gown.<sup>4</sup> CCTV shows that this was difficult to remove as it was a fitted garment and Ms X remained limp throughout.
41. When asked about the decision to restrain Ms X, Officer D says that previously when dealing with Ms X: *"she spits, she kicks, she claws, she fights"*. Therefore, his team restraining her was a *"precautionary measure"*.
42. Officers A and B covered Ms X with a blanket and all the officers left the room.

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<sup>4</sup> From here, we refer to the action of Police putting a gown on a detainee as 'gowning'.

43. Police policy does not provide specific gender considerations for gowning an individual. However, as above, policy is clear that same-gender searches are preferable. This differs for a strip search (where clothing is removed) that can only be carried out by someone of the same gender unless it is an *“extreme or urgent situation”*.
44. Officers C and D were not searching or strip-searching Ms X, and therefore did not breach any policy. However, Officers A, B and C told us they would apply the same gender principles as for the searching policy, when gowning an individual. In our view, this displays sound judgement.
45. When we asked Officer D what gender considerations he uses when gowning a detainee, he told us that: *“there’s a massive consideration. With [Ms X] my consideration is yup, she’s a female. Yup, I’m a male...”* However, in this instance he applied general rules such as having: *“two of us in the cell at all times, under CCTV, and never to remove any clothing more than outer. I removed a sweatshirt and then stopped at that point”*.
46. We asked Officer D why he cut off Ms X’s straps, which is more than her outer clothing. He told us:
- “My thought process around that was it was a swimsuit type one piece...I know that they button up between the legs. Male or female, I don’t want my staff going between this young lady’s legs...she had the custodial gown on, which has a rather large opening for the head...both the straps were visible on the top”*.
47. It appears Officers A and B were available while Officer D was cutting off the straps, based on their quick arrival once asked to assist. Therefore, Officer D had alternative options available, and did not have to cut her clothing off himself. We believe having a *“very good working relationship”* with Ms X did not warrant him being the one to remove the clothing.
48. Officer C says that when Ms X’s clothing was being removed, he asked Officer D about it:
- “I asked about that with him, and he said it was fine. I was taking the lead from my supervisor...at the time, he is doing his Sergeant stuff. He’s my supervisor.”*
49. Ms X has said the gowning immediately impacted her mental health. She said: *“I had entered a level of insanity after the 2 x male cell-officers had significantly mistreated me, cutting my clothes off when I was frozen still with fear”*. CCTV shows that Ms X displayed increasingly unusual behaviour such as striking various poses at CCTV, putting the cell mattress in the toilet, urinating in the sink, and taking off her gown. Ms X briefly exposed herself to the CCTV camera, however we believe it was unintentional.
50. Ms X said that she was: *“truly in an insane state of being”*. She described a previous experience where she believed worms were under her skin. Ms X said having her clothing removed was a *“fearful and stressful”* situation that *“pushed my frame of mind back into that place”*.<sup>5</sup>
51. We believe Officer C’s ability to query his supervisor’s practise shows sound judgement. As a more senior officer, Officer D should have been able to apply the same level of reasoning.

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<sup>5</sup> From here we will refer to Ms X’s experience as a ‘mental health episode’.

Although Officer D did not breach a specific policy when he removed Ms X's clothing, with the availability of Officers A and B (both female), he did not display sound judgement and his actions had a detrimental effect on Ms X.

*Was it reasonable for Officer C to not give Ms X food provided by her father?*

52. Part of Ms X's complaint to us was officers did not give her the Subway food that Mr Y had brought into Whanganui Station for her. She also said she was not given any other food within a reasonable timeframe.

53. At the time of this incident, Officer C was responsible for the safety and management of personnel in custody. When asked why Ms X was denied the food from Mr Y, he told us that:

*"if someone comes in with food, I don't know what's in that food, so I'm not going to give it to them...it could be laced with anything and I go give that to them, they have a medical event in the cells, that's on me, so they get the food we have. [Ms X] was supplied with food".*

54. While this is not specified in policy, it is Officer C's common practice. We think he made a reasonable decision to not let Ms X consume food from a source outside the custody unit and did so with Ms X's personal safety in mind.

55. Custody records show Ms X was provided with a meal two hours after coming into custody. Ms X was then provided with a further meal on request four hours later, and two hot beverages prior to leaving custody.

#### FINDINGS ON ISSUE 1

The search Officer B conducted was in accordance with policy.

The decision to place Ms X in a gown was reasonable.

No policy was breached by Officer D, however he did not display sound judgement in cutting off Ms X's clothing.

Ms X was provided with adequate food and it was reasonable for Officer C to refuse to give her food provided by her father.

#### ISSUE 2: WAS THE CHARGING PROCESS AND DECISION TO CHARGE APPROPRIATE?

56. Officer D told us that he was first told of Ms X's behaviour by Officer C. Officer D recalls him saying: *"I'm a married man with children I shouldn't have to put up with this"*. He told us that Officer C passed on that Ms X was:

*"imitating masturbation...she was touching herself and what appeared to be smearing it on the wall or the window and that she'd urinated all over the blankets and that she had said certain things that, there was something about her lips being hungry and wet or something and some other not nice bits and pieces but he was sufficiently upset with her behaviour to come and tell me about it".*

57. Officer C says he discussed charging Ms X with Officer D but told him: *“I was not comfortable with being portrayed as a victim of her actions...I felt uncomfortable with her behaviour, I didn’t feel comfortable going to the next level”*.
58. However, Officer D decided to charge Ms X with doing an indecent act with intent to insult; a charge which carries a maximum sentence of two years imprisonment. The act can occur in any place. The evidence relied upon by Officer D to lay this charge is set out in paragraph 26 and 27.
59. Officer D asked Officers A and B to write up the charge based on what Officer C had told him. Officers A and B say they based the charges on information they were told by both Officers C and D.
60. Officer A wrote the charging document on her computer. She told us she did not review the final document because: *“we were already two hours over time. I believe everyone was just kind of jumping in to help out to try and get everything that needed to be done, done”*.
61. Officer D did not review the CCTV footage himself. He wrote some of the summary of facts and opposition to bail documents and told us that Officer C helped him. Officer D says:
- “I can’t remember what paperwork I did and what paperwork he did, but we both worked on paperwork and then at the end we would’ve compared it to make sure that yeah, what I’ve written is a true and – or a fair illustration of what you’ve told me has happened and we simply do that because time, it’s not hurried, it’s not rushed or anything, it’s just it makes sense that both of us work on things. We do it all the time”*.
62. Officer C does not believe he wrote up the documents with Officer D. He told us: *“I never saw it in any state so I don’t know what’s, what was in it or what is in it or may have been in it, I don’t know”*. Additionally, Officer C was adamant he had not seen the documents.
63. While we believe that both Officer C and D have both honestly recounted their recollection of who helped write up the documents, we think it likely Officer D has confused this time for another due to the volume of documents he was required to write up in his role.
64. Officer C told us that he reviewed the CCTV footage later in the evening. He concluded Ms X was not masturbating and passed this conclusion on to Officer D at 11.40pm, while both officers were working 40 minutes after their shift. Officer C recalled that Officer D said he was *“happy”* but he *“did not elaborate what he was happy with”*.
65. We asked Officer D about Officer C telling him Ms X had not been masturbating. He could not recall the conversation and told us if this information had been brought to him, he: *“certainly wouldn’t reply ‘happy’ in regards to depriving someone of their liberty”*.
66. Officer D told us that if Officer C had come to him with *“a concern of that nature, or that gravity”* then they *“would have sat down and had a bloody good conversation about it”* and he would not have put in the hours of work afterwards to lay the charge.

67. If Officer C did tell Officer D this information, Officer D does not appear to have heard or processed it and continued with the charge. We accept that this is plausible for the following reasons:
- All officers were working overtime and were task-focused to complete their work and return home;
  - Officer D had only been in the role for 6 – 8 months, and did not have extensive management experience;
  - We see no reason to believe Officer D would intentionally lay the charge against Ms X if he knew it was not true. This is based on his prior working relationship with Ms X and the time it takes to complete the charges (which Officer D completed in off-duty hours).
68. We deem that the collaborative effort towards the charges by all the officers was reasonable given that all four officers were working overtime and attempting to be efficient. We do not believe there was any unwillingness to do their individual jobs and believe that each officer aimed to complete their work to a high standard.
69. The next day Officer D came into work off-duty to speak to his supervisor, Officer E, about the charge. He told us that he chose to come back to work as he had: *“never laid a charge of that nature before and it would be remiss of me to assume I’ve done it correctly right from the get go”*. We believe that returning to work in his own time shows Officer D took his role seriously.
70. Officer D says he likened Ms X’s behaviour to that which founded a similar charge that he knew had been laid in respect of another incident. He used this as a reference point when he was looking at the correct charge to lay. We believe that Officer D did this as he thought he was acting in the best interest of his staff and protecting their wellbeing.
71. Officer D told us that after speaking to Officer E he was left with the impression that Officer E and two other experienced members at Whanganui Station had reviewed the file and amended the caption summary to: *“better reflect the actions of the female during the night”*. Officer D believed that the review of the file had included the CCTV footage. He says he was then congratulated for the work he had done the previous evening.
72. Officer E did not review the CCTV footage. He told us that he did not feel it was appropriate to watch the footage because: *“I didn’t actually feel I had a reason to view it and could be accused of viewing it for other reasons”*. The reviewing terminal for the CCTV footage was in an area of the station where other staff could see, and he did not want Ms X’s alleged behaviour to be seen by other officers unnecessarily.
73. Officer E told us he had a conversation with Officer D explaining that behaviours that happen in the cell do not always result in charges, as a different standard of conduct is accepted.
74. Officer E reviewed the charging documents, amended the caption summary, and sought advice from an individual within Police Prosecutions Sections. We agree that it was reasonable for

Officer E to not review the footage and to rely on the account of a senior staff member, such as Officer D. We are satisfied Officer E's actions show due diligence.

75. The following is an abbreviated version of what was submitted in the Summary of Facts about Ms X's behaviour:
- 1) the sexually explicit comments made to Officer C;
  - 2) that Ms X removed all her clothing and urinated on the bedding;
  - 3) that Ms X masturbated; and
  - 4) that Ms X exposed herself to the CCTV camera and at regular intervals.
76. Ms X's lawyer said that Ms X: *"became extremely distressed upon reading the caption summary provided to her. She said it was completely untrue about her 'playing with herself' and she found that degrading"*.
77. Ms X informed her lawyer that she believed she had been mistreated by Police and her lawyer requested the CCTV footage. Officer E was informed by a colleague who reviewed the footage (to provide the lawyer with relevant sections) that there was no evidence to support the allegation that Ms X was masturbating. Therefore, the court had been provided with an incorrect account regarding Ms X masturbating and intentionally exposing herself.
78. On receiving Ms X's complaint, Police began an investigation in to how the court was provided with incorrect information. Since early December 2020, Police have investigated Officer D for a criminal charge of perverting the course of justice, during which time Officer D has been on heavily restricted duties.
79. We acknowledge that behaviour in cells is usually not assessed at the same standard as in public, and that Ms X was likely experiencing a mental health episode. However, in our view, while some information provided to the court was incorrect, there was sufficient evidence to enable Officer D to lay the charge he did against Ms X.
80. The elements of this charge would have been met if Police could prove Ms X placed the paper down her pants, and made the related comments to Officer C. CCTV footage shows Ms X putting the paper down her pants and her body language would tend to corroborate Officer C's evidence as to what was said.
81. Ultimately, it was Officer D's responsibility to ensure the information in the charging document was factually correct. Officer D relied on information from others to complete the charge and did not review the information himself. This appears to be a common Police practice. While officers do this to work efficiently, the practice creates the potential for them to inadvertently use and pass on incorrect information.
82. We believe Officer D made a genuine mistake in providing the court with incorrect information, for the following reasons:

- we have found no reason to believe he had any intent to cause Ms X harm;
- his intention appeared to be to work in the interest of his staff; and
- he believed the information had been reviewed by his supervisor before being sent to court (and he knew his supervisor could choose to view the footage), which suggests there was no deliberate intention to provide false information.

## FINDING ON ISSUE 2

There was sufficient evidence for Officer D to lay the charge of indecent act with intent to insult against Ms X, based on her actions and comments towards Officer C.

Officer D relied on information provided to him and made an error in judgement when he did not review all the information within the charging documents.

## Subsequent Police Action

83. Whanganui Police Station has changed the location of the CCTV review terminal to allow for review of footage in a private setting when required.
84. Police continued a criminal investigation with Officer D on restricted duties for over nine months. The Authority believes the decision to lay the charge against Ms X was reasonable and the mistake made in the documentation did not necessitate such restrictions on Officer D for such an extended period.

## Recommendation

85. We recommend pursuant to section 28 2(b) of the Independent Police Conduct Authority Act 1998 that Police:
  - 1) Provide further detail on the recommended gowning policy to reflect the gender considerations within the current 'Searching People' policy. This would stipulate that the gowning may only be carried out by a person of the same gender identity as the person to be gowned, unless in extreme or urgent situations.



**Judge Colin Doherty**

Chair

Independent Police Conduct Authority

18 November 2021

**IPCA: 20-5678**

## Appendix – Laws and Policies

### POLICY

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#### **‘Charging decisions’ policy**

86. A good charging decision is made when the charges chosen adequately to reflect the nature and extent of the criminal conduct (disclosed by the evidence) and provide the court with an appropriate basis for sentence.
87. Officers should consider whether the evidence they have obtained discloses an offence. Before filing a charge, officers must be able to prove each element of the offence.
88. The decision to prosecute and the charges filed are independently reviewed by Police Prosecution Services who have discretion to amend, withdraw and file additional charges. Review is a continuing process and prosecutors must consider any change in circumstances that occurs as the case develops.

#### **‘People in Police detention’ policy**

89. Detainees must be provided with adequate meals. Each station must have a local procedure for meal order, supply and payment. As a general rule, a prisoner must be supplied with a meal if they are in custody at a normal mealtime.
90. For detainees identified as a suicide risk, staff must consider removing their clothing and replacing it with a tear resistant gown

#### **‘Searching people’ policy**

91. Officers (or searchers requested by the officer in charge) may search a person who has been taken into lawful custody and is:
  - a) at a Police station, or
  - b) in other premises, or
  - c) in, or about to be placed in a vehicle being used for Police purposes, and is, or is to be, locked up (pending a decision on bail or for any other reason).
92. A rub-down search is a search of a clothed person in which officers may:
  - a) run or pat their hand over the body of the person being searched, whether outside or inside their clothing (other than the underclothing),
  - b) insert their hand inside any pocket or pouch in their clothing (other than the underclothing) for the purpose of permitting a visual inspection,

- c) require the person being searched to:
  - open their mouth
  - display the palms of their hands or the soles of their feet
  - lift or rub their hair.

93. To facilitate a rub-down search, an officer may require the person being searched to:

- a) remove, raise, lower, or open any outer clothing (including, without limitation, any coat, jacket, jumper, or cardigan) being worn by them, except when they have no other clothing, or only underclothing, under that outer clothing, and
- b) remove any head covering, gloves, or footwear (including socks or stockings) being worn.

Officers may also search:

- a) any item carried by or in their possession, and
- b) any outer clothing removed, raised, lowered, or opened for the purposes of the search, and
- c) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.

94. Officers may carry out a rub-down search of a person who is arrested or detained under any enactment, to ensure the person is not carrying anything that may be used to:

- a) harm any person (including themselves), or
- b) facilitate the person's escape.

This power may be used on every person who is arrested or detained.

95. 'Strip search' means a search where the person conducting the search may require the person being searched to undress, or to remove, raise, lower, or open any item(s) of clothing so that the genitals, buttocks, or (in the case of a female) breasts are:

- a) uncovered, or
- b) covered only by underclothing.

96. In general, searches should be carried out by constables, authorised officers or searchers of the same gender identity as the person to be searched and any person not of the same gender identity should not be present during a search. (Note that gender identity is not about sexual orientation but the gender (male or female) that a person being searched, or the searcher, identifies with).

97. Exceptions to same-sex people conducting searches:

- Rub-down search: If a constable, authorised officer or searcher of the same gender identity is not available within a reasonable time and there is no practicable alternative, a constable, authorised officer or searcher of the opposite gender identity may conduct or assist in the search. A medical practitioner, nurse, parent or guardian who provides assistance during a search does not have to be of the same gender identity as the person being searched.
- Strip search: A strip search may only be carried out by a person of the same gender identity as the person to be searched, and no strip search may be carried out in view of any person who is not of the same gender identity as the person to be searched. In extreme and urgent situations where sufficient same gender identity constables, authorised officers or searchers are not available, a constable, authorised officer or searcher not of the same gender identity may be out of view of the person searched, but within immediate call of the person searching. The out of view person can respond and protect the person conducting the search if the person being searched becomes violent.

# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

## WHAT ARE THE AUTHORITY'S FUNCTIONS?

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Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

## THIS REPORT

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This report is the result of the work of a multi-disciplinary team. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.

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Mana Whanonga Pirihimana Motuhake

PO Box 25221, Wellington 6140  
Freephone 0800 503 728  
[www.ipca.govt.nz](http://www.ipca.govt.nz)

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